IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 7458/06
(Jagdish Prasad Gadhwal Vs. The Executive Officer, Municipal Board, Bhadra and Anr.)

Date of Order : 07/02/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. I.R.Choudhary for the petitioner.

BY THE COURT:-

By the instant writ petition, the petitioner has impugned the award dated 31.7.2000 Annex.4 passed by the Labour Court, Sri Ganganagar.

I have heard learned counsel for the petitioner.

By award Annex.4 dated 31.7.2000, the labour court held that the petitioner workman was not in the continuous employment for the period commencing from 18.1.1985 to 30.11.1985 with the respondent No.1 the Executive Officer, Municipal Board, Bhadra and therefore, the reference made by the State Government under Section 10 of the Industrial Disputes Act, 1947 dated 24.7.1997 was answered against the petitioner.

On careful perusal of the award impugned, in my view, the petitioner workman failed to establish that he was continuously in the employment of the respondent No.1 for a period of 240 days in the preceding 12 months prior to his alleged retrenchment. The conclusion arrived at by the labour court is based on sound and proper appreciation of the evidence produced before it. The burden is on the workman to establish that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment. In the instant case, the petitioner workman has utterly failed to establish this fact.

In Municipal Corporation, Faridabad Vs. Sriri Niwas (2004) 8 SCC 195 Hon'ble Supreme Court held that the provisions of the Evidence Act, 1872 per se are not applicable in an industrial adjudication. The general principles of it are, however, applicable. It is also imperative for the industrial Tribunal to see that the principles of natural justice are complied with. The burden of proof was on the respondent workman herein to show that he had worked for 240 days in the preceding twelve months prior to his alleged retrenchment.

Thus, it has been held by Hon'ble Supreme Court that the burden is on the respondent workman to show that he had worked for 240 days in the preceding twelve months prior to his alleged retrenchment, which the petitioner workman in the instant case failed to show and therefore, the labour court was

justified in answering the respondent against the petitioner workman. Even otherwise, the writ petition suffers from the delay and latches. The award impugned is dated 31.7.2000 and the petitioner has filed the instant writ petition after more than six and half years.

The writ petition is therefore, dismissed. There shall be no order as to costs.

(H.R.PANWAR),J.

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